



January 20, 2000

Mr. Jacques L. Kiere  
Sheriff  
County of Rockwall  
950 T. L. Townsend Drive  
Rockwall, Texas 75087

OR99-3373A

Dear Mr. Kiere:

You ask this office to reconsider Open Records Letter No. 99-3373 (1999) in light of new facts concerning your arguments against disclosure. Your request was assigned ID# 132078.

The Rockwall County Sheriff's Department (the "department") received a request from two requestors for information relating to an internal affairs investigation regarding a former employee. The information responsive to the request relates to accusations of sexual harassment against a department employee. You claimed that the requested information was excepted from disclosure under sections 552.101, 552.103, 552.109, and 552.111 of the Government Code. In Open Records Letter No. 99-3373 (1999), this office found that the department could only withhold certain information under sections 552.101 and 552.117 of the Government Code. Specifically, we found that the department must withhold "only the identifying information about victims of the alleged sexual harassment and witnesses thereto." *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). We also found that identifying information about the one requestor who was mentioned in the requested materials could not be withheld from that particular requestor since that requestor has a special right of access to the information which would be excepted from public disclosure only under laws which protect her own privacy. *See Gov't Code § 552.023*. Additionally, under section 552.117 of the Government Code, you must withhold the home address, phone number, social security number and family information of a current or former city official or employee as outlined on page 3 of Open Records Letter No. 99-3373 (1999).

You argue in your request for reconsideration that the department should be allowed to withhold the requested information from disclosure under section 552.103, the litigation exception, because the department now has concrete evidence to support its claim. We decline to alter Open Records Letter No. 99-3373 (1999). First, your request is invalid because the Seventy-sixth Legislature amended section 552.301 of the Public Information

Act to provide that a governmental body is prohibited from asking for a reconsideration of the attorney general's decision. Gov't Code § 552.301(f). Second, section 552.103(c) of the Government Code now provides that "[i]nformation relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information." As Open Records Letter No 99-3373 (1999) stated, we do not believe that the department reasonably anticipated litigation on the date that the requestors sought the requested documents.

We do understand that the department may have been confused about what information to release to each of the requestors. For the requestor who is mentioned in the requested materials, you must withhold all section 552.117 information and all of the identifying information about the victims and witnesses of the alleged sexual harassment except for that section 552.117 information and identifying information related solely to that requestor who was mentioned in the requested materials. She has a special right of access to the information solely about herself which would be excepted from public disclosure only under laws which protect her own privacy. See Gov't Code § 552.023. As for all other requestors who are not mentioned in the requested materials, you must withhold all section 552.117 information and all of the identifying information about the victims and witnesses of the alleged sexual harassment in accordance with Open Records Letter No. 99-3373 (1999).

We affirm Open Records Letter No. 99-3373 (1999). This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Don Ballard  
Assistant Attorney General  
Deputy Chief, Open Records Division

JDB/ljp

Ref: ID# 132078

Encl. (Open Records Letter No. 99-3373 (1999))

cc: Mr. John E. Schulman  
8330 Meadow Road, Suite 212  
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(w/ Open Records Letter No. 99-3373 (1999))

Mr. Gene Hale  
P.O. Box 1095  
Rockwall, Texas 75087  
(w/ Open Records Letter No. 99-3373 (1999))